

REMARKS

The Examiner is thanked for the performance of a thorough search. Claims 1, 9, 10, 24, 25, 26, 37, and 43 have been amended. No claims have been canceled or added. No new matter has been added. Each issue raised in the Office Action is addressed hereinafter.

I. ISSUES NOT RELATED TO THE PRIOR ART

A. OBJECTION TO THE TITLE

The Office Action alleged that the title of the invention is not descriptive and requests “[a] new title that is clearly indicative of the invention to which the claims are directed.” Office Action, page 2. The present title indicates the invention. Reconsideration is respectfully requested.

B. CLAIM 24 – 35 U.S.C. § 101 – COMPUTER READABLE MEDIUM

Claim 24 stands rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. The Office Action states that “The language of the claim “A computer-readable medium” raises a question as to whether the subject matter is a new and useful process, machine, manufacture, or a composition of matter, or any new and useful improvement.” The rejection is respectfully traversed.

Present Claim 24 recites “A computer-readable **storage** medium **storing**...” This amendment clarifies that the computer-readable medium includes storage media, such as the tangible embodiments described in the application, but which are not limited to the examples disclosed therein, of “a floppy disk, a flexible disk, hard disk, magnetic tape, or any other magnetic medium, a CD-ROM, any other optical medium, punchcards, papertape, any other physical medium with patterns of holes, a RAM, a PROM, and EPROM, a FLASH-EPROM, any other memory chip or cartridge,” as described in the application, paragraph [0097]. The

Applicant respectfully submits that present Claim 24 recites statutory subject matter in the form of an article of manufacture. Reconsideration is respectfully requested.

II. ISSUES RELATED TO THE PRIOR ART

A. CLAIM 1 – 35 U.S.C. § 102(b) – HIGUCHI

Claim 1 stands rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Higuchi, et al., (Pub# US 2002/0161891) (“*Higuchi*”). The rejection is respectfully traversed.

1. The management server disclosed in *Higuchi* does not **monitor** operating conditions of a server.

Claim 1 recites, among other things, “**monitoring** operating conditions of a server”. *Higuchi* does not disclose or fairly suggest this monitoring feature in any way. The portion of *Higuchi* cited by the Office Action regarding monitoring describes a management server comprising a resource database that stores information it receives about lending servers. *Higuchi*, ¶ 46-49. While the management server in *Higuchi* stores information it receives about the lending servers, it does not **monitor** the lending servers for the information.

As known to persons in the relevant art, and using the plain and ordinary meaning, monitoring entails observing, supervising, or controlling the activities of other programs. The American Heritage® Dictionary of the English Language, Fourth Edition. Houghton Mifflin Company, 2004. 10 Oct. 2007 (defining “monitor” within the field of computer science as “a program that observes, supervises, or controls other programs.”). The management server taught in *Higuchi* does not obtain the information about the lending servers through observing, supervising, or controlling the lending servers. Rather, it passively receives the information in requests from the lending servers. *Higuchi*, [0048] (stating “information based on registration requests from lending servers is stored”).

In contrast to the management server of *Higuchi*, Claim 1 features obtaining information about the operating conditions of a server through observing the operating conditions at the

server. For example, in an embodiment, a process communicatively coupled to a server observes one or more operating conditions of the server such as CPU usage percentage, memory usage percentage, network conditions, and number of processes running. Application, [0054-0055]. The process is monitoring the server because it is a program that is observing another program (the server). While the management server in *Higuchi* receives information from another program, it does not observe, supervise, or control that program. Therefore, *Higuchi* does not disclose, teach, or suggest “**monitoring** operating conditions of a server”.

Consequently, as at least one element is not disclosed, taught, or suggested by *Higuchi*, it is respectfully submitted that Claim 1 is patentable over the cited art and is in condition for allowance.

2. Higuchi does not disclose, teach, or suggest a behavior modification hint wherein the behavior modification hint comprises a suggestion of **two or more** alternative servers.

Claim 1 features, among other things, a behavior modification hint that comprises a suggestion of **two or more** alternative servers. The portion of the *Higuchi* cited in the Office Action regarding the behavior modification hint feature of Claim 1 discloses client systems that request, from a management server, borrowing of resources on a lending server. Higuchi, [0058]. In response to the borrowing request, the management server disclosed in *Higuchi* returns “the allocated resource information determined from the lending server ID, the logical partition ID, and the lending key or the lending conditions in the resource database to the client system.” Id. The information returned to the requesting client in *Higuchi* specifies at most a **single** lending server uniquely identified by the lending server ID. In contrast to the information returned to the requesting client in *Higuchi*, the behavior modification hint sent to the one or more clients as featured in Claim 1 includes a suggestion of **two or more** alternative servers. Suggesting two or more alternative servers is an unexpected and counter-intuitive approach not

suggested in the reference because a suggestion of two servers requires the client to select among the two or more suggested alternative servers rather than slavishly redirecting itself to one particular server. *Higuchi* does not vest the client with discretion to choose among multiple alternatives, which is possible in the claimed approach. Therefore, *Higuchi* does not disclose, teach, or fairly suggest a behavior modification hint wherein the behavior modification hint comprises a suggestion of **two or more** alternative servers.

Consequently, as at least one element is not disclosed, taught, or suggested by *Higuchi*, it is respectfully submitted that Claim 1 is patentable over the cited art and is in condition for allowance.

B. CLAIMS 24, 25, 26 – 35 U.S.C. § 102(b) – HIGUCHI

Independent Claims 24, 25, and 26 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by *Higuchi*. The rejection is respectfully traversed.

Independent Claims 24, 25, and 26 recite features similar to the features recited in Claim 1 that is deemed to be in condition for allowance. Therefore, Claims 24, 25, and 26 are patentable over *Higuchi* for at least the reasons given above for Claim 1. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

C. REAMINING CLAIMS – HIGUCHI

The pending claims not discussed so far are dependant claims that depend on an independent claim that is discussed above. Because each dependant claim includes the features of claims upon which they depend, the dependant claims are patentable for at least those reasons the claims upon which the dependant claims depend are patentable. Removal of the rejections with respect to the dependant claims and allowance of the dependant claims is respectfully requested. In addition, the dependent claims introduce additional features that independently

render them patentable. Due to the fundamental differences already identified, a separate discussion of those features is not included at this time.

III. CONCLUSION

For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

Please charge any shortages or credit any overages to Deposit Account No. 50-1302.

Respectfully submitted,

Hickman Palermo Truong & Becker LLP

Date: October 24, 2007

/AdamCStone#60531/

Adam Christopher Stone
Reg. No. 60,531

2055 Gateway Place, Suite 550
San Jose, California 95110-1089
Telephone No.: (408) 414-1080 ext. 231
Facsimile No.: (408) 414-1076